

## FLORIDA'S DEPENDENCY BENCHBOOK - DOMESTIC VIOLENCE AND THE EFFECTS ON CHILDREN

**Statistics.** Many of the statistics in this section are presented as a range, as many researchers in this field calculate their data based on national surveys and censuses. [1]

Each year, it is estimated that between 7 million and 14 million children [1] are exposed to violence against their mothers or female caretakers by other family members. The physical abuse or neglect of children in homes where domestic violence occurs is between 9 and 15 times higher than the national average. [2] In one study, more than 60 percent of the children surveyed were exposed to violence within the past year, either directly or indirectly, and nearly one-half of the children and adolescents surveyed (46.3 percent) were assaulted at least once in the past year. [3]

Research suggests that being battered is the most common factor among mothers of abused children. It has been estimated that 30 - 60% of children whose mothers are battered are themselves victims of abuse. Children living with an abused mother have been found to be 12 to 14 times more likely to be sexually abused than children whose mothers are not abused. [4]

One recent study found that, in the United States, stepfathers abuse to death children under 5 years old at a rate of 55.9 per million at-risk children per year, compared to 5.6 per million at-risk children per year who die at the hands of biological fathers. [5] The authors of the study noted that if they had expanded the definition of "stepfather" to include live-in boyfriends and other similarly situated relationship roles and included all types of abuse-related deaths (not just battering deaths), at-risk children living with a "stepfather" would be 100 times more likely to be killed than children living with biological parents. [5] However, abused mothers in domestic violence situations are also more likely to abuse their children - 8 times more likely than non-abused mothers. [6]

Finally, in homes where there is domestic violence between parents, as many as 87% of children witness it. [6]

**The effects of domestic violence on children and adolescents.** Family violence is more traumatic for most children than street violence. The victims and perpetrators are most often people a child knows intimately and depends on for love and protection. [7] However, domestic violence can affect different children differently. One study coined the term "adversity package" to describe the factors that can accumulate in a child's life; [8] these factors include child abuse, parental substance abuse, mental health difficulties (in the parents or in the child), social isolation, unemployment, homelessness, and involvement in crime. [8] The presence or absence of multiple factors can alter the child's reaction to domestic violence, both in the short term and in the long term. [8]

A multitude of studies have demonstrated that children exposed to domestic violence tend to have worse problems than those not exposed. [1] And children exposed to domestic violence

have problems as bad as those physically abused or physically abused and exposed to domestic violence. [1]

Examples of how children can be physically harmed by domestic violence include:

- Children can themselves be physically abused;
- Children often try to intervene to protect the adult victim, which puts them in danger from the abuser;
- Domestic abusers may use children to control the adult victim by violence or threats of violence against the children.

Studies most often use the Child Behavior Checklist to assess the effect of domestic violence. [9] Exposed children generally exhibit more aggressive behavior, antisocial behavior, internalized behavior, lower social competence, and poorer academic performance than those not exposed.[9]

Adult domestic violence can have other devastating consequences for children in addition to bodily injury.

- Domestic violence can deprive children of housing, schooling, or medical care.
- Flight from domestic violence often leads to homelessness among victims and children and is a primary reason why adolescents run away from home.[10]
- Children exposed to domestic violence often have higher rates of cognitive, psychological, and emotional impairments than those not exposed. [2]

A number of long-term effects on children exposed to domestic violence have also been documented, as follows:

- Psychological problems, such as withdrawal, hyper vigilance, nightmares, anxiety, depression, low self-esteem, and shame. [2]
- Physical symptoms, often identified as reactions to stress, such as sleep disorders, headaches, diarrhea, ulcers, asthma, and depression.
- Academic problems such as poor school performance, truancy, absenteeism, difficulty concentrating, and school failure. [2]
- Social and behavioral problems, such as inability to form trusting relationships, aggressive or violent behavior, and substance abuse. An exposed child is more likely to be physically aggressive toward others in the community [9] and is eighteen times more likely to be physically aggressive toward his or her parents. [8]

Children exposed to violence can also suffer effects that can last an entire lifetime, including:

- Depression
- Eating disorders and other health problems
- Drug use and alcoholism
- Criminality [2]

Finally, one study found that there is “an intergenerational transmission rate of 30% which can manifest itself in many ways.” [8] A twelve-year study found that children exposed to violence are almost twice as likely to experience violence in their own adult relationships. [8]

It should be noted that current research is somewhat conflicting regarding the effects of abuse on children. While several studies support the information provided above, two studies found that many children suffer no greater problems than children not exposed to domestic violence. [1] Further, one article suggested that the variance found in papers is a result of vague definitions or retrospective accounts. [1] For example, researchers differ on how to define terms such as “exposure to domestic violence” and what acts constitute adult domestic violence. [1]

**How to ascertain whether domestic violence is present in a dependency case.** Child welfare agencies have found that domestic violence is present in one-third to one-half of their dependency cases, [11] and this estimate is probably lower than the true number of domestic violence - dependency crossover cases. [12] As one researcher explained, “Many women experiencing domestic violence never disclose the battering to their closest friends and family, let alone to their attorneys or a government agency empowered to remove their children.” [12]

If DCF has not notified the court that domestic violence is present, it is possible that there is none occurring in the family. However, since domestic violence can be concealed from case workers, investigators, and other professionals, the following signs of domestic violence in children and adults should be noted. The presence or absence of such signs does not necessarily correlate to the presence or absence of domestic violence. However, they are signs that there might be domestic violence, thus providing the court an opportunity to examine the case more closely for domestic violence.

Children exhibit several cues that they may be living with some form of violence. These cues include:

- Physical violence towards animals or people
- Withdrawn or absence of emotions
- Aggressive behavior
- Anxiety or hyper-vigilance
- Substance or alcohol abuse
- Risk-taking behaviors
- Difficulty paying attention
- Problems in school
- Difficulty with peer relationships [13]

There are many possible signs of an abusive parent. The signs that suggest possible domestic violence are those that indicate disrespect toward one parent. [13] They can be broken into two sections, general signs and behavior in court.

General signs of abusive parents may include:

- Authoritarian parenting style
- Under-involvement in children’s lives
- Considering themselves superior in all aspects of family life
- Placing little to no value on abused parent’s abilities
- Continuous criticism of abused parent [14]

Behavioral signals in court of abusive parents may include:

- Claiming the other parent is stupid or inflexible;
- Angering easily;
- Attempting to portray him/herself as the true victim;
- Attempting to engender sympathy with the court;
- An unwillingness to understand another's perspective;
- Advocating or adhering to strict gender roles;
- Patronizing the other party, counsel, or the court;
- Attempting to create an alliance with the court;
- Minimizing, denying, blaming the other parent for, or excusing inappropriate behavior; [13] or
- Speaking more than seventy-five percent (75%) of the time. [15]

There are signs to look for in the abused parent also. These signs include:

- Difficulty presenting evidence (perhaps from fear, abuse, or the belief that she will not be believed);
- Inappropriate response resulting from fear, depression, stress or other abuse;
- Anxiety or lack of focus in the presence of the abusive parent;
- Aggression or anger when testifying;
- Stress or duress when other parent is testifying; or
- Appearing numb, uninterested, or unaffected. [16]

There are other signs that abuse may be present. These signs may be exhibited by either party and may mean different things, depending on whether they are revealed by the abusive parent or the abused parent. These signs include:

- One parent always waits for the other parent to speak first. This could be an indicator of control if done by the abusive parent or of fear if done by the abused parent.
- One parent glances at the other parent each time he or she speaks to check for the other's reaction. This could be an indicator of intimidation if done by the abusive parent or of fear of later retribution if done by the abused parent.
- One parent excuses every conflict discussed. This could be a sign that either parent is attempting to minimize the abuse.
- One parent sends the other parent facial cues. This could be a sign of a number of issues. If done by the abusive parent, it could be a sign of control or intimidation. If done by the abused parent, it could be a sign of fear or apology. [15]

**Common issues with domestic violence in dependency cases.** There are several issues that may arise in a domestic violence - dependency co-occurring case. A familiarity with these issues can prepare the court for acknowledging and managing such issues.

Removal of the abusive parent.

One researcher notes that "a finding that domestic violence exposure is detrimental to children need not interfere with a woman's rights to her children, because the preferred solution in many cases is to separate the batterer from the children." [17] However, this

preferred solution has pitfalls that may inhibit successful implementation. The abusive parent may not cooperate. He (or she) may ignore legal threats, may resist attempts at removal, or may come looking for the spouse and children after separation. The efforts to protect the abused parent and child may push the abusive parent into working harder at maintaining control over them. [17]

Several research efforts have found that leaving the abusive parent often does not stop the abuse. The intensity and lethality of the violence actually increases after separation. [18] One article finds that divorced and separated women report being battered 14 times as often as those still with their abusive partners, and 75% of the abused women who are killed by past or present partners are women who are divorced or separated. [6]

#### Failure to protect.

Another problem with attempting removal lies with the abused parent. The abused parent may not want to leave the abusive parent. She (or he) may deny that any abuse is happening, may minimize the severity or frequency of the abuse, or may say that the abusive parent is getting better. [17] Often this minimization is born out of the fear that the child protection worker or court is going to take the children away - the abused parent may feel that the benefits of the relationship (and keeping the children) outweighs the harm of the abuse. [17] This fear of separation, that the court will take the children away, stems from “Failure to Protect” provisions in the law. [18]

In dependency court, abused parents may find themselves accused of child abuse or neglect because they allegedly failed to protect the children from the abusive parent’s abuse. [17] This “mother-blaming” often fails to consider what efforts the abused parent has made to remove the children from the violence, fails to consider the benefits of family preservation versus removal, and may result, in extreme cases, in removal of the child from the abused mother’s custody. [17] Even when the child protection worker recommends that the abused parent seek an injunction, the parent may be in danger of removal of the children due to “failure to protect.” [19] One researcher noted that this tendency (to invoke “failure to protect” actions against the abused parent) stems from child abuse advocates “painting a hopeless picture of battering in which violence almost inevitably escalates, spreads to the children, and does not cease upon separation.” [17]

Courts in Florida have maintained a fine line in “failure to protect” actions. The courts suggest considering whether the abused parent knows or should have known that the abusive parent would engage in the conduct that is considered abusive to the child. [20] The courts also indicate that, if the abused parent took steps to prevent the child from being abused - or even from being present while he or she was being abused - such steps could prevent a “failure to protect” action. [21] However, courts have held that if there are multiple acts of violence in the house while the children are present (even if the violence is not directed at the children), such acts might be a basis for “failure to protect.” [22]

#### Cross allegations.

A second issue common to Dependency - Domestic Violence co-occurring cases is cross allegations and false reports. As one researcher noted, “There is virtually no research on the

extent to which spousal abuse allegations are clearly false and maliciously fabricated, but this issue is becoming an increasing concern for the justice system.” [18] One article noted that false reports, although not very common, can be simply another tactic the abusive parent uses in his or her attempts to control the abused parent. [23]

More common are cross allegations, which are commonly raised by the abusive parent in an effort to either control or discredit the abused parent. [16] There are several points to examine that may assist in the determination of the truthfulness of the claim:

- Determine whether any alleged physical act was part of a pattern of emotional, physical, financial, or sexual abuse.
- Determine whether any alleged physical acts were done in response or in reaction to other forms of abuse and control, including financial control, isolation, physical violence, sexual abuse, or humiliation.
- Consider whether one parent inflicted more harm.
- Consider the impact of the alleged abusive behavior on the other parent or the child.
- Consider a parent’s or child’s fear of the other parent. [16]

In any cross allegations, be aware that one parent may be using violence to protect herself (or himself) against a perpetrator who is using force as a part of a larger pattern of coercive control. [24] To verify these claims of self-defense, review historical reports and individual interviews with the victimized partner, the children, and the abusive partner. [25]

#### Impact of domestic violence.

A final issue to be aware of in co-occurring cases is the impact of domestic violence. One article discussing the impact of domestic violence advocates considering the context of the violence.

Consider a situation in which partner A slaps partner B. First, imagine that when the incident takes place, there is no prior history of physical violence or of other abusive behaviors between A and B. Then, imagine that although this incident is the first instance of physical violence, A has previously undermined B’s efforts to seek employment, denigrated B’s parenting in front of the children, and isolated B from her family and friends. Then, imagine a situation in which A broke B’s nose the week before and A is threatening to kill B and harm their children. The act of slapping is the same in each situation, but the impact and consequences are very different. [24]

The two different contexts of the violence in the passage above should be considered when facing domestic violence in a dependency case. The article continues to say that failure to consider context can lead to greater danger for abuse victims and greater risk to children exposed to violence. [24]

A second aspect of the impact of violence to consider is the nature of the violence. Is the violence physical or psychological? One article presents the following case:

Employing his knowledge of her insecurities, he regulates her day-to-day activities, chooses her friends, denies her access to marital assets, and

regularly belittles her in order to reinforce her insecurities. Let us also presume that at no time does he strike her or threaten to do so. Few in either the mental health community or the legal community would disagree that this wife is being emotionally abused. [14]

While this type of abuse is considered domestic violence, the article's authors contend that its effects are very different from physical abuse. [14]

**Best practices in dependency cases involving domestic violence.** This best practices model is intended to serve as suggested guidelines for how domestic violence should be safely handled in dependency cases. Its purpose is to provide guidance on issues related to domestic violence in dependency cases, from initial filings to enforcement of placement orders.

#### Flexibility of response.

Throughout the dependency process, whenever domestic violence is present, the court should try to remain flexible and ensure abused parents have access to support resources so they may develop plans to reduce or eliminate the dangers of domestic violence. [32] Consider each family situation in context and in light of what is helpful and safe for individual family members. [24] Avoid automatically referring a family to a standard set of processes and services; [24] instead, try to determine which interventions are appropriate for each family based on the specific characteristics or patterns of violence. [24] Finally, there may be cases in which the abused parent refuses help or stays in a relationship that endangers the children. If so, the children may need to be removed from the home, but continue to order services for both the abused parent and the abusive parent. [32]

#### Need for confidentiality.

The dependency court is responsible for a large volume of information, often sensitive or confidential. This responsibility is heightened when there is domestic violence present. When making decisions and policies about information disclosure, balance

- the need for information required to prove the occurrence of child maltreatment and to keep children safe with
- the need of battered women to keep information confidential in order to maintain and plan effectively for their safety. [32]

Information that should be very carefully protected includes the victim's safety plan and current address. [32] Finally, in the event that victims are asked to waive their privilege regarding confidential information, verify that the victims understand the implications of such a waiver. [32]

#### Reasonable efforts.

Under federal law, judges must make three reasonable efforts determinations at some point during a case: to prevent removal, to reunify, and to achieve permanency. [13] When making a reasonable efforts determination, address the problems that compromise the child's safety in a way that protects abuse victims while they address their other issues. [13]

Please see resource material insert at the end of this section: Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence (excerpt). Provided by the National Council of Juvenile and Family Court Judges Family Violence Department.

### Initial pleadings.

Many battered women who have not abused their children are afraid to admit that they are victims of abuse, or that their children have witnessed it, for fear of losing custody of their children. [32] Thus, the absence of allegations of abuse does not mean domestic violence is not present. Recognize that abuse victims may attempt to hide the problem for reasons including fear, shame, or embarrassment. [16] The court may be called upon to make a temporary order or emergency parenting plan based on very limited information. In such an instance, the primary focus should be on child safety. [24] In every case, try to spot the signs of abuse as early as possible. The earlier in a case signs of abuse and coercive or controlling behaviors can be recognized, the faster the response to create a safe environment for the child. [16]

### Failure to protect.

The court should avoid blaming a non-abusive parent for the violence committed by others. If a petition alleges “failure to protect,”

- examine the efforts the abused parent made to protect the children,
- examine the ways in which the abused parent failed to protect and why, and
- attempt to identify any perpetrator who may have prevented or impeded her from carrying out her parental duties.[32]

If jurisdiction is established over children who have only witnessed domestic violence, examine the evidence for significant emotional harm from that witnessing and for indications that the abused parent is unable to protect them from that emotional abuse even with the assistance of social and child protection services.[32] Finally, refrain from removing a child from the non-abusive parent if it has not been proven by clear and convincing evidence that the non-abusive parent is unable to protect the child.

### Pretrial orders.

Pretrial orders that restrict custody and visitation are “an especially powerful trigger for abusive behavior.” [16] Abusive parents may make multiple attempts to change the orders, even in an absence of changes circumstances. [16] Also, when coercive control is present, the abuser will likely still use every contact with the abused parent as an opportunity to continue the abuse. [16] And this abuse may not be limited to the abused parent either - the risk of a child being exposed to domestic violence is heightened. [14] Thus, when drafting pretrial orders, consider that the less room for contact or for argument over the meaning of a term in the order, the greater the safety for the abused parent and for the child. [16]

### Techniques of abuse.

As noted above, an abusive parent may attempt to use the legal process to continue to exert coercive control over the abused parent [16] or to continue to abuse the other parent



financially, emotionally, or psychologically. [16] There are several responses the court can make to each abusive technique. Determine which response will make the abusive parent stop the abuse in a case-by-case analysis.

If the abusive parent excessively files motions or petitions:

- Order the parent bringing excessive motions to pay the attorneys fees and costs of the other parent,
- Order the parent who files frivolous motions to reimburse lost wages and other expenses of the other parent,
- Excuse the at-risk parent from appearing at hearings or permit the at-risk parent to appear by telephone, or
- Order that no court appearances may be scheduled without your prior approval. [16]

If the abusive parent excessively files discovery requests:

- Prohibit any discovery or court appearances that directly involve the children, like depositions,
- Ensure that the at-risk parent has adequate resources to comply with appropriate discovery,
- Control the discovery process by requiring that the abusive parent show the relevancy of requested deposition testimony and other potentially harassing discovery,
- Ensure that the abusive parent has no physical access to the at-risk parent during the discovery process, or
- Ensure that the at-risk family members are adequately protected during the pretrial process (e.g., private security, to be paid for by the controlling party, or orders that the abusive parent not be present during depositions). [16]

If the abusive parent excessively files motions to change the order:

- Keep in place any orders you have made that enhance the safety of the at-risk parent or child,
- Require compliance with your orders unless there has been a significant change in circumstances,
- Prohibit contact between the parents, including during visitation exchanges, or
- Keep all protections in place, including no contact with the child, if that term was part of your original order, absent strong evidence of change and compliance. [16]

If the abusive parent files multiple requests for continuance:

- Deny requests for excessive or unnecessary delay. [16]

If the abusive parent abuses the ex parte process:

- Determine whether the at-risk parent is available for the hearing and whether adequate notice was given,
- Determine whether a true emergency exists,
- Use collateral information to assist you in making a decision; for example, determine whether any protection orders have been entered against either parent,

- In post-divorce proceedings, attempt to determine whether the claims asserted in the ex parte motion were raised in prior litigation,
- Consider the length of time since any prior custody litigation, and
- Consider whether prior allegations of abuse have been raised in prior court proceedings or with children's protective services. [16]

See also: Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice, Recommendations from the National Council of Juvenile and Family Court Judges - <https://www.childwelfare.gov/pubPDFs/ncjfcj.pdf>.

#### Courtroom practices.

The following is a list of best practices for a dependency hearing when domestic violence is present. These best practices allow for increased safety to the victim and the child while still maintaining the judicial process.

Judges should promote a culture of patience and courtesy throughout the court system so that everyone is treated with dignity and respect. [32]

- Insist that the attorneys treat all parties with respect. If the abusive parent's attorney is allowed to be disrespectful toward the opposing counsel, the opposing party, or any witnesses, that behavior serves to empower the abusive parent and can thereby increase the safety threat to the at-risk parent.
- Because the at-risk parent may need additional time to answer questions, insist that the attorneys give each party adequate time to respond.
- Insist that counsel maintain a respectful distance from the witness.
- Warn the parties and counsel against the use of sarcastic or other disrespectful remarks or tone.
- Consider imposing sanctions for the continued use of disrespectful tone, remarks, or tactics.
- Watch out for and intervene to stop any controlling non-verbal behavior by one parent toward the other.
- If one or both parents are pro se, require all questions and answers in court to be funneled through you. [16]

To ensure safety during the course of litigation when there is suspicion that one parent has been controlled by the other parent:

- Inform security that the suspected abusive parent must be kept a safe distance from the at-risk parent. This may include escorting the at-risk parent into and out of the court house. [16]
- Physically separate the petitioners and respondents in the waiting area and in the courtroom to ensure that there is no communication between them. [26]
- Order the controlling parent to remain in the courtroom for 15 minutes following a hearing so that the other party has an opportunity to leave safely. [16]
- Use the services of a victim advocate in the courtroom. [26]
- If the parties are pro se, require a bailiff or other person to be placed between them when they stand before the bench.[16]

In addition to these practices, encourage the same case worker and attorney for the children and parties to appear at all hearings on the case. [32]

Finally, remember that the at-risk parent or child may be re-traumatized by the presence of the abusive parent, which may affect how and whether the at-risk parent's testimony is presented. [16]

#### Drafting orders.

- As a general guide, orders should be drafted with the following goals in mind:
  - keeping the child and parent victim safe;
  - keeping the non-abusive parent and child together whenever possible;
  - holding the perpetrator accountable;
  - identifying the service needs of all family members, including all forms of assistance and help for the child; safety, support, and economic stability for the victim; and rehabilitation and accountability for the perpetrator;
  - creating clear, detailed visitation guidelines that focus upon safe exchanges and safe environments for visits. [32]

When there are conflicting goals, one article proposed considering these priorities in dependency cases:

- Priority 1: Protect children
- Priority 2: Protect the safety and well-being of the victim parent
- Priority 3: Respect the right of adult victims to direct their own lives
- Priority 4: Hold perpetrators accountable for their abusive behavior
- Priority 5: Allow child access to both parents

When all five priorities cannot be simultaneously met, those priorities that are lower on the above list should be relinquished in succession until the conflict is resolved. [24]

When drafting orders, there are many things to consider. The court should take sufficient time to examine each case carefully and then regularly review each case to ensure that court orders are carried out by the parents and by the social service agency and other service providers. [32] Set a date in a few months to review compliance and any difficulties that the child might be experiencing. [16] In this fashion, the orders can be tailored to each specific case and monitored for effectiveness.

Because domestic violence is present in the case, write orders that effectively manage contact between the abusive and non-abusive parents. Carefully address contact issues, keeping in mind safety of the parties and the children.

- Design an order that eliminates any contact between the parties or, if a no-contact order is not possible, design the terms of your order with an eye toward requiring the parties to have as little contact with each other as possible. [16]
- Consider designating another person to communicate emergency messages when visitation cannot occur. [16] Set out rules for the communicator so that he or she knows not to communicate any messages beyond a verified emergency involving the child or the need to cancel a scheduled visitation. [16]

When drafting orders, visitation can be a central issue, and the presence of domestic violence can make orders very complex. To clarify orders, consider ordering a thoroughly detailed visitation schedule.

- Consider ordering professionally supervised visitation between the child and the abusive parent. [16] Use the services of any available supervised visitation center when ordering that visitation must be supervised. [26] Also, consider ordering the parent whose behavior requires the supervision to pay the supervisor or the costs of visitation exchange. [16]
- If professional supervision is not available, determine whether the child is at risk if there is visitation. [16]

Another aspect of visitation to consider is tardiness to visitation. Inform parties that, should the parent fail to appear for visitation within a set number of minutes of the appointed time, the visitation is cancelled and will not be made up. [16] Consider setting out a mechanism to enable the parties to reschedule visitations cancelled on account of an emergency (such as death of a family member or serious illness of a child or parent). [16]

Grant temporary child support in a timely manner and award ancillary relief where it is appropriate. (See [Child Support in Dependency Cases](#) section).

#### Things to avoid in drafting orders.

Avoid drafting orders that mandate a large portion of time in which the abused parent and abusive parent are in contact. Promoting parent-child contact when ex-spouses are prone to become physically violent may create opportunities for renewed domestic violence over visitation issues and exchanges of children. In the worst cases, terrorizing control of an ex-spouse is achieved by refusing to return the child after visits, abducting the child, or threatening to do so.

Avoid referring both parents to parenting education courses that stress co-parenting, ongoing contact, and reducing conflict levels. These courses should not be used in situations in which there has been either a history of violence or coercive control. The parents should be excused from the class, or, in the alternative, each parent should be offered, separately, a special parenting skills class that stresses safety planning and parallel parenting and offer domestic violence information and referrals. [24] Anger management classes should NOT be ordered in domestic violence cases.

Avoid allowing the abusive parent to pay family expenses directly rather than making support payments to the other parent. Financial control is frequently part of coercive behavior and can by itself be sufficient to maintain control over the family. Controlling finances can also be a method of limiting the other parent's ability to parent effectively. [16]

Avoid referring any case to mediation if there is any history of domestic violence between the parties that would compromise the mediation process. [26]

#### Mediation.

Studies have shown that the use of mediation can significantly reduce time to permanency in dependency cases. [27] Additionally, there is higher satisfaction by the parties involved, and

the children are more likely to be placed with non-abusive parents or relatives. [27] In dependency situations, mediation has many important advantages over litigation. [27]

However, in order for mediation to work, the parties need equal power and must share some common vision for resolution. In cases of domestic violence, these requirements are noticeably absent. [28] Additionally, the rhetoric so central to mediation - rhetoric like “empowerment” and “collaboration” - can make the situation worse for the abused parent by suggesting that she must work with and somehow empower the abusive parent. [29] Mediation assumes both parties will cooperate to make agreements work. But when domestic violence is present, the abused parent always “cooperates” with the abusive parent, while the abusive parent never reciprocates this cooperation. [28]

The risk of further harm to the abused parent makes mediation an unattractive dispute resolution technique. Mediation can cause further damage to the abused parent and may increase her (or his) risk of physical harm. [15] Additionally, the presence of domestic violence may have rendered the abused parent unable to bargain in her (or his) own self-interest or the interests of the children. [15] The fear of retribution may prevent the abused parent from asserting her (or his) own interest. [15]

Further, the “future focus” of standard mediation may seem to absolve the abusive parent of accepting responsibility for past actions, which may lead to the abused parent believing that the mediator somehow condoned the behavior, damaging the credibility of both the mediator and the mediation, and thus judicial, process. [15] This could serve to empower and embolden the abusive parent, who may believe that his (or her) misbehavior has been condoned and that there will be no repercussions for his actions. [30]

When making referrals to mediation, judges may wish to consider whether there are domestic violence issues in the case that might make the parties unable to effectively mediate. While there is no prohibition on the use of mediation in dependency cases that include domestic violence issues, the imbalance of power among parties in such cases may make mediation inadvisable. See §44.102(2)(c) (providing that upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process).

If the possibility of mediation is raised, assess the situation carefully. If there is a history of domestic violence, do not refer the case to mediation. If there is no history of domestic violence, consider screening the parents for the presence of domestic violence. Several researchers have suggested screening protocols to evaluate whether domestic violence is present before allowing mediation. [15, 29,31] Researchers recommend judges develop some screening process before finding that mediation is appropriate. [31] One author wrote that screening procedures are the “cornerstone of safe

mediation.” [15] However, be aware that the abused parent may have difficulty responding to screening questions. [31] Screening tools administered in a perfunctory manner may fail to uncover abuse. [31] Also realize that screening need not be done solely through questionnaires. Evaluations of the courtroom behaviors of each parent can also be used to determine whether it is safe to allow mediation.

### Accountability and contempt.

Abusive parents generally have carefully manufactured a situation that facilitates and, in their minds, justifies their behavior. When the justice system fails to hold abusive parents accountable, especially when their behavior has been revealed to the court, it reinforces their belief that there are no real consequences for their actions. Because the abusive parent now sees the court as a collusive partner, he or she may have no reason to think that the court will hold him or her accountable to obey any of its orders. [16]

Therefore, an important task is recognizing signs of abuse and holding the abusive parent accountable. Assigning accountability and not permitting it to be shifted to the abused parent may be one of the best approaches to maintain a safe environment for the children. [16] If abuse is noticed, inform the abusive parent that failure to alter his or her behavior will result in loss of rights of custody and visitation, may result in termination of parental rights, and may lead to criminal prosecution. [32]

It is important to carefully evaluate any new allegations of abuse or violations of orders to avoid putting the non-abusive parent at risk of choosing between non-compliance and a failure to stop more abuse.[16] To effectively evaluate new allegations, it is important to understand the context within which they occurred. The abused parent may violate the terms of the order to protect the child, especially if the child was abused during a visit. [16] Or the abused parent may take the child out of the jurisdiction to protect the child. While this may seem inappropriate, evaluate the context surrounding the action and address any valid safety concerns. If the removal was done to protect the child from the abusive parent, consider drafting an order that is least disruptive to the child. [16]

If a parent files for contempt for what seem to be trivial infractions, evaluate whether that parent is using the legal process to exert coercive control over the other parent. [16] Inquire into the facts of any alleged violation and the intent of the complainant. The information garnered may not aid in the contempt matter, but it may assist in evaluating the effectiveness and appropriateness of prior orders. [16] Consider penalizing the complainant if the allegation was brought in an attempt to exert coercive control over the other parent. [16]

### **Chapter 39 injunctions.**

Chapter 39 of the Florida statutes provides courts and the Department of Children and Families a process for obtaining an injunction to protect children from abuse, neglect, and domestic violence. [26] Chapter 39 injunctions are not the same as Chapter 741 injunctions.

### The process.

At any time after a protective investigation has been initiated under Chapter 39, the court shall have the authority to issue an injunction to prevent any act of child abuse. § 39.504(1).

DCF often files the motion, but law enforcement, state attorney, other responsible person, or the court itself, may, if there is reasonable cause, file for an injunction to prevent any act of child abuse. § 39.504(1).

Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act. § 39.504(1).

If there is a pending dependency proceeding regarding the child whom the injunction is sought to protect, the judge hearing the dependency proceeding must also hear the injunction proceeding regarding the child. § 39.504(1).

The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court must set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service or process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice. § 39.504(2).

Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. If the petitioner cannot locate the alleged offender for service after a diligent search pursuant to the same requirements as in § 39.503 and the filing of an affidavit of diligent search, the court may enter the injunction based on the sworn petition and any affidavits. At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance. § 39.504(3).

The primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration. § 39.504(4).

The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is availing and enforceable in all counties in the state.

§ 39.504(4)(c).

The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which may include ordering the alleged or actual offender to:

- refrain from further abuse or acts of domestic violence, § 39.504(4)(a)(1);

- participate in a specialized treatment program, § 39.504(4)(a)(2);
- limit contact or communication with the child victim, other children in the home, or any other child, § 39.504(4)(a)(3);
- refrain from contacting the child at home, school, work, or wherever the child may be found, § 39.504(4)(a)(4);
- have limited or supervised visitation with the child, § 39.504(4)(a)(5);
- vacate the home in which the child resides, § 39.504(4)(a)(6); and/or
- comply with the terms of a safety plan implemented in the injunction pursuant to §39.301, § 39.504(4)(a)(7).

Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction:

- Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver, § 39.504(4)(b)(1);
- Temporary support for the child or other family members, § 39.504(4)(b)(2);and/or
- The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members, § 39.504(4)(b)(3).

**An adult member of the same family who is a victim of domestic violence is not precluded from seeking protection for himself or herself under § 741.30.**

Service of process on the respondent shall be carried out pursuant to § 741.30. The department shall deliver a copy of the injunction to the protected party, to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in § 901.15(6), to enforce the terms of the injunction. § 39.504(5). Failure to comply is a first degree misdemeanor. § 39.504(6).

The person against whom an injunction is entered under § 39.504 does not automatically become a party to a subsequent dependency action concerning the same child. § 39.504(7).



## **COMPARISON OF INJUNCTIONS UNDER CHAPTER 39 AND CHAPTER 741**

CHAPTER 39	CHAPTER 741
Purpose is to protect and promote the best interests of the child in child abuse or domestic violence situations.	Purpose is to protect adults in domestic violence situations, but children may be included in terms of injunction.
DCF often files the motion, but law enforcement, state attorney, the court itself, or a responsible adult may file for the injunction on behalf of the child.	Victim is the petitioner and must file petition with the court. A parent can file a petition on behalf of a minor child.
The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Best interest of the child is still the court's benchmark.	Either party may move to modify or dissolve the injunction at any time. Risk to children is not a factor.
May order treatment for offender. May also order offender to pay for medical, psychiatric, or psychological treatment of the child or other family members. If issued to protect the child from domestic violence, the court may also award exclusive use and possession of the dwelling to the caregiver, award temporary custody to the caregiver, and establish temporary support for the child.	May order treatment for respondent only, such as: batterer intervention program, substance abuse, mental health, etc.
Supervised visitation may be ordered with access to DCF visitation centers and supervision.	Supervised visitation may be ordered but will depend upon the availability of local programs.
Law enforcement has a duty and responsibility to enforce with specific authority to arrest.	Law enforcement has a duty and responsibility to enforce with specific authority to arrest.
Violation is a first degree misdemeanor.	Violation may be handled as civil or criminal contempt or as a first degree misdemeanor.
Injunction ends when modified or dissolved by the court.	Injunction ends on a specific date or upon further order of the court.

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### ***Making Reasonable Efforts in Cases Involving Domestic Violence***

Making Reasonable Efforts in Cases Involving Domestic Violence is an excerpt from the National Council of Juvenile and Family Court Judges, Family Violence Department's *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*, pages 24-31. You can find the document in its entirety at the following link:

<http://www.ncjfcj.org/resource-library/publications/reasonable-efforts-checklist-dependency-cases-involving-domestic>.